

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**JOSE MANUAL MONTALVO,**

**Petitioner,**

**v.**

**THOMAS WERLIZH,**

**Respondent.**

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**Case No. CIV-11-773-R**

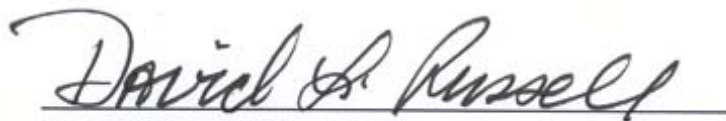
**ORDER**

Before the Court are the Report and Recommendation of United States Magistrate Judge Gary M. Purcell [Doc. No. 12] and Petitioner's "response" or objection to the Report and Recommendation [Doc. No. 14].

Petitioner's entire objection is devoted to attempting to show, for the first time, that the remedy under 28 U.S.C. § 2255 is inadequate or ineffective so that the Court will entertain his 28 U.S.C. § 2241 petition challenging the validity of Petitioner's federal conviction and sentence. However, "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *ClearOne Communications, Inc. v. Biamo Systems*, \_\_\_ F.3d \_\_\_, 2011 WL 3437796 at \* 18 (10<sup>th</sup> Cir. Aug. 8, 2011)(No. 09-4097, 10-4168)(quoting *Marshall v. Chater*, 75 F.3d 1421, 1427-27 (10<sup>th</sup> Cir. 1996); see *United States v. Garfinkle*, 261 F.3d 1030, 1031 (10<sup>th</sup> Cir. 2001); *Gonzales v. Ledezma*, 417 Fed. Appx. 824, 825, 2011 WL 1167666 at \* 2 (10<sup>th</sup> Cir. March 30, 2011). Accordingly, Petitioner waived the issue of the purported inadequacy or ineffectiveness of the § 2255 remedy.

Therefore, the Report and Recommendation of the Magistrate Judge [Doc. No. 12] is ADOPTED in its entirety, the Respondent's motion to dismiss the petition for a writ of habeas corpus herein pursuant to 28 U.S.C. § 2241 is GRANTED and the 28 U.S.C. § 2241 petition is DISMISSED without prejudice for lack of jurisdiction.

IT IS SO ORDERED this 13<sup>th</sup> day of September, 2011.



DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE